2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

423 Allowance must also be made for considerable variation over so large an area and among such large numbers of groups. It must be taken into consideration too that the average informant has very little idea of the functioning of his culture beyond his own immediate milieu; the procedure, for example, by which the larger units came into occupancy of their grazing areas would be matters of high politics far removed from the knowledge of the ordinary man. In general one may say that there was no private property in grazing lands, that the larger groupings occupied the traditional areas which had been used by their ancestors before, that conflicts between such groups were settled usually by consultation and that within the boundaries of such areas family groups moved with considerable freedom subject to some pressure from local leaders and with a tendency to occupy the same spot year after year.[80]

The winter habitations, the meadows (kol) where hay was cut, and the agricultural lands may be considered as in effect private property. Grodekov says[81] that land was not considered as the property of particular individuals but belonged to them only while they were occupying and using it. Dingelstedt[82] theorizes upon this point in saying that although they did not recognize private property in land they conceded the usufruct of it in perpetuity to that individual who had improved it by constructing a house or developing an agricultural plot or irrigation system. It is doubtful, however, if the Kazak were concerned with such delicate legal distinctions. In practice one might sell one's winter dwelling, and on the death of the owner it was inherited by his youngest son.[83] One might even, according to my information, sell such property to a member of another uru.

The status of the meadow lands for raising hay is less definite, as might be expected, as a result of the recent growth of the custom of storing up winter fodder. The *Kazaki*[84] states definitely that they were the property of individual owners. My informants were less clear on the point, declaring at various times in relation to different incidents that they belonged to an entire uru, to the rich men in the uru, and finally that in theory they belonged to the uru but were for all practical purposes divided among its wealthiest and most [685] important members. Their private ownership is made clear by the fact that it was a serious act, involving the payment of damages, for any unauthorized person to take hay from land not his own. Also, in the case of a large meadow divided among several owners the portions belonging to each were delimited by shallow trenches or by piles of stones at the corners. [246] It was a matter of common knowledge who owned each section. The hay was cut and stored for the winter by the hired laborers of the owner or by his relatives working for him. A man who owned no hay fields of his own might turn his animals out to graze for

[80] Questions of the occupancy and utilization of the land during the period of Russian domination have been discussed by Pálosi, *Question de la terre*, 472–87.

[81] *Kirgizy i Kazaki-kirgizy*, 102.

[82] *Le Droit coutumier*, 213–14.

[83] See also Radlov, *Aus Sibirien*, 1: 416.

[84] Baronov, Bukeikhan and Rudenko, *Kazaki*, 9.

601

Husband's older and younger brother's wife - abysin.
Husband's father - ata, kainata.
Husband's mother - ana, kainana.
Wife's father - ata, kainata.
Wife's father's father - ulu ata.
Wife's mother - ene, kain ene.
Wife's father's mother - ulu ene.
Wife's father's older brother - ulkun ata.
/33/ Wife's father's older brother's wife - ene.
Wife's father's older or younger brother's son - kain.
Wife's father's older or younger brother's daughter - yenge.
Wife's father's younger brother - kainaga.
Wife's father's younger brother's wife - yenge.
Wife's father's elder relative - kainaga, ulkun ui.
Wife's father's younger relative - kain, otau.

* * * *

593

The disobedience of children is punished by the domestic corrective measures of the parents. A son is punished by his father, a daughter by her mother, for the father rears the son, and the mother the daughter. The proverb "the son goes before the father, like a slave before a master" and others entered in Makovetskii, p. 28, Pt. 1, were found by E. A. Aleksandrov in the Kazalinsk uyezd.

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During the reign of the patriarchal clan principle, litigation between children and parents could not even be mentioned. Bodily punishment and humiliation before the people is customary for blows and offenses against the parents by the children.

For an offense against the father (a false denunciation, etc.) the son who has been given his allotment pays from one horse to one camel, and among the Kirgiz, an atton, i. e., a horse and a long coat. He is obliged to slaughter the animal and beg forgiveness on his knees. They admonish him, saying: "Who is greater: you or the people?" (yurt kup pe, sen kup pe.). And finally the elders and aksakals beat him without counting the strokes until he repents. In a similar situation a daughter who has received her allotment is not subjected to bodily punishment. The penalty for her is paid by her husband. Among the Kirgiz, her mother beats her.

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For stealing from parents, children who have received their allotments are not accountable at all up to three times, for it is considered only a secret taking away (yasyryb algan). Only the

593 fourth time are they obliged to return what they have taken. The
185 son of a married daughter, who has not succeeded in being granted something from his grandfather, takes it without permission and does not give it up for /34/ the first three times. The fourth time the bii sentences him to return the thing without a penalty, but a penalty is fixed for a fight at the time the thing is taken. All this relates also to the close kinsmen in general.

When the thief denies his guilt, the bii interrogates witnesses, but he is not sworn among kin. Incidentally the bii consoles the father (or kinsman) by the fact that he takes from the son in his turn when the latter becomes rich (collected in the Perovsk uyezd).

593 Patricide is unknown in the steppe. For this crime they would
682 banish the offender from the society after a preliminary disgrace E. A. Aleksandrov, assistant to the chief of the Kazalinsk uyezd, says that the customary law is silent concerning patricide. The killing of children can happen by mistake, and in such a case it is not punished. (1)

[847] 1. It sometimes happens that the Kazakhs in a fit of anger and in general in matters of dispute, in showing their opposition throw their children under the /horse's ?/ legs of the adversaries, who not infrequently trample them in fighting. Women especially practise this kind of opposition, throwing unweaned children under the feet of horses. Wergeld [628] in such cases is sought from the persons in the tent or in the village.

593 Children who have not received their allotment cannot have their own separate property. But once they have received their allotment the father ceases to distribute his property to them.

[882] Until the age of 12-15, children are not yet of serious mind
[675] (akyl toktatpaidy), and therefore sales, purchases, loans and other arrangements by them are invalid. Buying and selling done against the will of the father by a son who has not yet received his allotment is not broken.

The power of the mother rests on the power of the father. Children obey her for fear that she will tell the father.

When a father wishes to free himself from an incorrigible son, he gives him a small allotment, leaving him to his own devices to earn the kalym /bride price/ if he is unmarried. If this son is already married, the father expels him without an allotment, leaving him to earn

in the hands of prosperous persons, for whom the poor constitute workers. 423

The smaller the number of livestock, the more farming there is. 311 /103/ Since the time of famine in the year of the rabbit, (1) the

1. The famine of the winter of 1879-1880. For a description of this winter see Nos. 17 and 18 of the Turkestanskie Vedomosti, 1885, in the article by Aleksandrov: "Iz zhizni stepnykh uezdov Syr-Dar'inskoi Oblasti" /From life in the steppe uyezds of the Syr-Darya oblast/. [1731]

The cycle of twelve years, by which the Turks determine age and time elapsed, consist of the following names: 1) chich-kan, mouse, 2) siir, cow, 3) bars, tiger, 40 koyan, rabbit, 5) ulu, crocodile, 6) dzhilan, snake, 7) dzhilky, horse, 8) koy, ram 9) meshin, monkey, 10) tauk, hen, 11) it, dog, and 12) tonguz, pig. [805]

nomads, realizing the lack of stability of livestock raising on the principles accepted by them, have turned to the production of supplies of grass in winter, and to agriculture.

For the damage of a hayfield from cattle grazing, according to Torgai, they pay the householder damages only if he himself has not ceased to use that hayfield. 685

If a man who is inscribed in another uyezd wishes to engage in agriculture in a strange pasture or a strange summer camp, the community to whom the land belongs demands rent from him for its use, the amount of which depends on the conditions. The person in question is forbidden to plant trees and to build. But as soon as he is inscribed in that uyezd and volost where his tilled land is, the land becomes his property and he pays the usual tributes (chubauz) and dues. 427 422

Swampy places (tugai), overgrown with rushes, etc. are still not sold, since they are widespread. Nevertheless they are becoming more and more associated with the person who winters in them and has stores of hay, with which he frequently leaves people during the summer. Persons of outside communes are not admitted to these winter camps. In case of misunderstandings, these persons pay money for the fodder under foot - chubauz (Perovsk uyezd).

To put through a new canal, one or more workers, depending on the amount of work, come out from each tent of the group of ten, group of fifty, or of the village or in general that group of people 425 476 312

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233 disputants are the same age, the seniority of the clan or the lineage is taken into consideration.

[423] Among the Kirgiz, no one can occupy a summer camp where a certain clan has nomadized for a long time. It is possible to say: "I have no summer camp. Permit me to be your neighbor" (kongsylash). But nothing can be done in case of refusal, for what right can be had to a strange summer camp? (brauning yailauinda nese bar).

If one clan enters the pastures of another, representatives of the latter receive kurabashi from the former, i. e., one sheep from each herd. (1)

1. Kura - a herd up to 600 heads.

[416] If a village migrates to a locality near which another village is already camped, and the livestock of the former should worry or kill some animal belonging to the village which migrated to this locality first, the former group must pay the injured party for everything he has lost. But if the livestock of the village which arrived first worries or kills an animal belonging to a village which migrated there later, the latter receives no remuneration at all.

511 /112/ The ancient custom of the gratuitous giving of food (kunakasy beru) to a guest (1) and his horse, and a place to sleep is

1. Calling the guest "of God" (khuday kunak) is probably a transposition of the Sart proverb: "A guest is a gift of God" (mikhman atai khuda).

based 1) on community of property, for the Kazakhs call this kunakasy the unallotted property of Alasha (Alashtyng uleismegen inchisi), (2) and

2. Although according to the sense of this saying, non-Kazakhs do not have a right to kunakasy, they too are not refused.

2) on the fear that if the guest dies of hunger wergeld will be demanded for him.

Tradition attributes the establishment of kunakasy to the Kazakh clan founder Alasha. In his old age Alasha kept a part of his livestock for himself and divided the remainder of the livestock among his three sons, from whom the three hordes existing today are descended. He called the share of the property received by each of them inchi, i. e., the imprescriptible and inviolable property of each of them. "But," he added, "under the conditions of your nomadic life, because of your kinds of occupations, in

self.

If the youngest among the travellers finds a coat, cap /tyubeteyka/ or other parts of clothing, he gives what he has found to the eldest, on the demand of the others. If all are of the same age, the thing found is given to the person of the white bone. If there is no one belonging to the white bone among them, it is given to the guest, i. e., the person of a strange clan. If there is no guest, it is given to the mullah. If there is no mullah, it is given to the married man, because married men are in general senior to bachelors. If all are married, it is given to him who married earliest. This giving out of clothing is called baylagan. 425 576

If a fox is seen in a strange trap (kakpan), the finder takes it for himself and leaves the trap. To take the trap is to steal, but taking the fox is not stealing. (1) Even in /122/ court when the 425 224

> 1. If an owner of a trap or a hunter with a dog catches a first fox, and if a Kazakh who rides by by chance, even a stranger, announces that he needs it /122/ for a gift or for the success of his future hunting, the hunter gives it to him. In case he refuses he pays a fine.

trap is required to be given up, it is never demanded that the fox taken at the same time be given back.

If a hunter (mirgen) kills a wild ass before others, he gives its back (sauri) to the oldest of these, or to the mullah, and in general as was related above. The giving up of the animal which has been shot is called syralyga. (All the above information from Torgai). 224

In the Perovsk uyezd, money, clothing, strange livestock joining the herd, etc., which are found, remain with the finder, and it is brought to the knowledge either of the supposed owners or of the authorities. Then the find is given back to the owners for syuyunchi, which is equal to one-tenth or one-twentieth of its value, i. e., approximately four times less than when it is taken from a thief. They are given back to kinsmen without pay. If the owner of the object does not declare himself in one or two years, the object found becomes the property of the finder. If the find was not announced to the public (dzhau kege shygarmak) with the purpose of appropriation, and then the owner of it appears, then the object, or if it no longer exists the value of it is returned to the owner, with all his court expenses, but without a fine. The concealment of a find from the investigation of an owner is considered thievery. 425 [685].

425 Among the Kirgiz a find belongs to the finder, with its division into parts for the witnesses of the find.

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422 Scrupulousness with regard to objects accepted for safe-keeping
577 (amanat) is a moral obligation, but not a juridical one, as is evident from its name: "godly amanat" (kudai amanat). Therefore objects are given for safe-keeping only to persons one knows well, or to kinsmen.

422 Objects being kept in safe-keeping are returned to the owner
685 on his first request. The owner beats the guilty person for their fraud-
672 ulent loss and sale, calling him to account, as though for robbery. The keeper is not held responsible for an accidental loss, reported immediately to the elders or authorities. The Kirgiz have /123/ the same custom. For the undeclared loss of an object which was given without witnesses, an oath is required from the defendant or the plaintiff, if they are good people. On the basis of the oath they may or may not require the return of the object and the payment of court expenses, but there is no fine or other penalty. If the object was given before witnesses, the judgment is made without the oath. If expenses were connected with the acceptance of the objects for safe-keeping, these are paid by the owner.

If the person who has accepted the object requested it himself for temporary use, he pays the expenses connected with its transfer, also for the deterioration of the object from use, and for accidental damage and loss (for example, the loss of livestock during a snowstorm).

Cargo being conveyed by drivers is also considered something entrusted for safe-keeping. The loss of the cargo by a driver who has engaged himself to deliver it to its destination is equated with premeditated robbery, i. e., the value of the cargo is returned with a fine of double the value. In case the driver was forced by necessity to transfer the cargo to another person to deliver, he is freed from the responsibility, upon presentation of a receipt from this person.

If in a fire or other general calamity (tengri kazasy) only the amanat perished and no other property, the full value of it is required to be paid. If, however, the amanat and the property of the person keeping it both perished, then the latter either pays half its value, or
422 else pays nothing at all (Perovsk and Auliye-Ata uyezds). An agreement is made concerning the degree of responsibility for the object

entrusted for safe-keeping before it is accepted (the Kirgiz Kurpetai Dauletkulov). 422

When someone migrates with his herds into a strange winter camp, he usually asks its owners to give him a place on the conditions of amanat. At first they refuse him. Then he promises to repay them. After this, in part for the sake of a good deed (savab), and in part for profit, they give him a place, but for no more than one year.

In contradiction to Makovetskii, according to Torgai it is not customary to lend out milking animals for money. Oxen, horses and camels are lent out on shares (šeriklikke) for agriculture. 426

/124/ If an animal which has been taken as an amanat is returned in a very emaciated condition which makes its owner think that it will not live through the winter, then the person keeping it for safe-keeping promises to feed it until the spring. 422

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Something which was given or contributed for a pious (nazr) or charitable (kudai) end is not returned, nor is a gift intended to honor a superior (izzat) or a inferior (ham) person. 431

Clothing given by highly placed personages should be worn during presentations to these persons. [576]

Gifts for friendship, called kolka, are subject to return if they are not reciprocated for by similar gifts in the course of a certain time (Auliye-Ata uyezd). Among the Kirgiz, stealing one's gift back is punished like ordinary stealing. According to Torgai, the bii says to the thief: "Why did you give it away? Now it is already his property." The defendant replies: "My relatives did not consent to the gift which I gave. I was ashamed to demand it back, and therefore I stole it." The bii either requires him to return the stolen object to the one to whom it was given, without a fine for stealing, or else sentences him to a fine, without returning the object, since the thief was its owner. [685]

If someone is driving military booty, those who encounter him say say: "Hey heroes, give us sauga! (1) Then it is obligatory to give up

1. Among the Kazakhs sauga means a gift asked from those returning from war (according to bii Khalmakhammed). Among the Sarts, however, sauga or saugati means the same as what the Kazakhs call bazarlyk.

a horse, sheep or some other object.

000 usually guarantees.

It is possible to sell property in the absence of the owner only
437 under the following circumstances: in case of close kinship, of trust,
432 and by order of the authorities. (1)

1. In the latter case they choose only that animal which in not working, not in a caravan, in general the least necessary one.

/127/ An object purchased from minors is returned without fine on the demand of the father.

[685] A person who knowingly buys something stolen is considered a thief.

The buying of livestock or objects which are not in sight is
437 avoided. But if they do buy sight unseen, a horse is understood to be a five year old stallion or a three year old mare, and a camel a five year old male or a three year old female (Perovsk uyezd).

A deposit is unknown to the Kazakhs.

At the bazaars there is always a special middle man (del'del') for each type of livestock, a Kazakh or a Sart, who tries everything to bring the two sides to an agreement, putting the hand of the seller into the hand of the buyer by force.

In addition to shaking hands, the act of sale is validated by the seller by the words: Use it with good fortune, etc. (bereke tap, khayrin kur, iygliginga tutun, etc.), and by the buyer with the words: "May one be returned to you a thousandfold; May you too benefit" (biring myng bulsun, sen de bereke tap).

Both sides can still back out until the money has been paid.
437 After the payment they cannot. However the seller can take back
432 the object sold, with the consent of the buyer, for a certain sum to pay it off (pshayman, pshaymana). The buyer too can request, but not demand, of the seller the breaking off of the sale if the animal is in the same condition as it was at the time of purchase.

If in about a week's time faults are shown in the animal which were not mentioned during the sale, but outside people knew of their existence, the buyer can refuse the animal or demand the return of the money paid. In anticipation of this, it has become customary for the middle man to say to the buyer during the sale: "Look yourself, to see if the animal is absolutely healthy. Once you have bought it, it will be yours, even if it dies today." (Collected in the Perovsk uyezd).

In the Auliye-Ata uyezd, according to the communication of

489 /138/ Drivers (kerekesh tyuyekesh) are dependent upon caravan heads (karavanbashis) /keruanbasy/. The latter are of two kinds: 1) Well known (bel'gili) and influential (ulkun) persons, living in cities, where they give the merchants guarantees of the scrupulousness of the drivers; 2) persons who are less influential (kshi, ksi) who are placed first at the head of the caravans, and receive the invoices from them. In addition to these appointed karavanbashis, the leaders of the caravans are usually also the best people in general among the drivers.

The drivers can transfer their licenses /bilet/ to the leader of the caravan, even though each has his own camels and a special cargo.

The karavanbashis go in advance.

The custom among the urban karavanbashis to help the drivers out with favors (yagalsyb salu) until they find work, also exists among the Kazakhs. (Torgai and Umurbek).

Merchants can send their cargo without the use of karavanbashis, by drivers who have guarantors. Before sending the cargo, the merchants and the drivers, or karavanbashi in their place, exchange written bonds on the quantity of the cargo, the price of the shipping, and the time of delivery.

The karavanbashis cannot abolish the low wage established for one of the drivers, to the detriment of another.

The karavanbash chooses the time and place for halts and spending the night. He settles arguments between drivers on the road. He forces them to pay debts and imposes fines for stealing. Occasionally heavy corporeal punishment is arranged, which is administered standing, not lying down, and for this there can be no complaint. Umurbek admits even that if there is disagreement between the karavanbash and the collective opinion of the drivers he must be obeyed, although in such cases it is difficult for him to get his own way.

489 672 685 According to the old customary law, the drivers had to pay damages even without a preliminary agreement, on the basis of the rules of acceptance for safe-keeping.[1] According to the new customary law those who are not obligated by signature, the affixing of a seal and stamp /tamga/ do not pay. The exhaustion /139/ of the camels and their falling down is not taken into consideration by the sender of the cargo. The losses are born by the driver. He changes the tired camels for fresh ones, or buys others, changes the loads of the fallen animals onto other camels, etc.

According to Torgai and Umurbek, a driver is not responsible to

1. [Ct. cat. 116, p. 109 -- A.]

the owner of a camel, when he has rented it for money (kere) from an outsider, and it falls, for some reason or other than its load being too heavy. But he is responsible for a camel which was taken for use without pay. However, they rarely pay in full (tutas), for the bii takes into consideration the fact that the camel was given on the basis of acquaintanceship, and arranges an agreement for 1/2, 1/4 or one-eighth the value of the animal. The demand in court for the full value of the camel would be a manifest rupture of the conditions stated above. 489 672 685

If a driver loaded a greater weight on a camel than that permitted by the owner of the fallen animal, for example 648 lbs. instead of 576 lbs. (1) the value of the fallen camel is divided into as many

1. Every camel has a known lifting capacity. Some carry only up to 432 lbs., others up to 648 and even to 720 lbs. The average weight without straining is about 500 lbs.

parts as there were pounds in the load, and the driver is required to pay as many parts as there were extra pounds, in the given example, two parts.

The owner of a spring and a well can refuse to give a caravan a place for a halt and water, because of its inadequacy for his own needs, and for other reasons. It is impossible to complain about this in court. But if an owner with extra space does not allow a caravan to come in in winter during bitter cold, and people or livestock freeze as a result, customary law asks wergeld for the people and the payment of the value of the livestock. 489 [423]

Now drivers are not willingly permitted to stop near a village, for a loss may occur in the caravan for which the drivers will blame the nearest village. [672]

In case of a complaint in court concerning a loss taking place between two villages, the biis make an inspection of the place and /140/ measure the distance of each neighboring village from the place of the loss by means of a rope. Then the village is accused of the theft, which is shown to be closest (Tergai). According to other sources, the biis do not measure the distance but accuse the village which is considered less dependable. (Report of the chief of the Chimkent uyezd, the biis Sagyndykov and Sultan Kanaev and other persons of the Chimkent and Kurama uyezds).

There are no drivers among the Kirgiz, since the Auliye-Ata Kirgiz have few camels.

628

Folk custom not only permits but also obliges the persons who have suffered to avenge the crimes committed against them. The avenger is usually the person who has suffered, but a part or even the whole clan has a right to take part in the revenge. The entire clan considers itself obligated to avenge a case of the secret kidnapping of a girl by a Kazakh of another clan, or the driving away of a considerable number of livestock, which may belong to only one person, but one who is honored by his kinsmen. Also specific insults not only of an honored member, but of any Kazakh, which are made by a mob, call for armed defense and the resentment of the entire people.

The limit of the revenge is considered to be doing harm to the adversary on an equal level to the harm suffered from him. Then the hostile lineages or clans already take part in pacifying their members. But if the avenger does not cease to wreak damage on his adversary, he is subjected to fines of an atton or higher, and in extreme cases to corporeal punishment on the part of his kinsmen. The fines go for the use of the person suffering from superfluous revenge.

Peaceful agreements are permissable in every offense and crime. The fines in such cases (outside of court) go to the use of the person who suffered, or else, when they are considerable, they are divided among the closest kinsmen of the receiver.

673

Although custom does have the concept of more /143/ serious and less serious crimes, it does not divide them into criminal and civil crimes.

672

A crime which is committed with premeditated intent increases the blame. The commission of a crime with provocation, especially if it is called forth by the sufferer, lightens the blame. Circumstances which lighten the offense are: the thoughtlessness of the transgressor, or the honor and respect he enjoyed before the crime was committed. The commission of a crime in the steppe in an open place by day lessens the offense. A crime committed in a tent at night increases the offense. Poverty does not lighten the guilt. It does not excuse thievery, for example, for the clan is held responsible. A clan which has not helped a poor man, pays all claims against him three times, each time compelling him to reform, and forcing him to make promises on his oath. (1) The commission of a crime in a state of drunken-

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1. After the third time he is driven out. A poor man and a person without a clan gives up his daughter in place of money, and pays off the sum required of him from the

685 kalym he receives for her. But if he also has no daughter, he enters into the service of the plaintiff.

672 ness lightens the blame, and in the opinion of some, even frees the offender from a fine, and he is only obligated to pay for the damages.

Official persons are not punished more severely than private persons for a crime.

Crimes committed for reasons beyond the control of the person's will (illness, temporary insanity, etc.), do not bring punishment upon the persons committing them. In such cases the kinsmen are held responsible as not having watched over the activities of their sick fellow members and not having protected the sufferers from danger. Those who are insane from birth and deafmutes are not punished for crimes committed and their kinsmen are not held responsible for them. Offenders who are under age are not punished. Their parents and close relatives are held responsible for them. Husbands are responsible for the crimes of their wives, but the wives are not responsible for their husbands. The successors of deceased criminals are held responsible in property for their crimes. /144/ In general, the responsibility in property for crimes extends to the seventh degree of kinship inclusively.

685 In Makovetskii (Pt. I p. 81) we find that punishment is
672 decreased when a theft is committed in a strange volost. Certain biis of the Syr-Darya oblast disagree with this. They maintain that suits for theft should be judged with equal strictness, whether they are committed in an outside volost or in one's own, against the defenseless (for example, from children), or against the strong. (1)

1. Aleksandrov reports that the Kazakhs of the Kazalinsk uyezd steal livestock primarily from other clans and uyezds. The people are indulgent about this, considering it something which goes with youth, although they sometimes are reproachful about it in words.

673 Careless actions which result in damage are judged as crimes. Wealthy persons compensate for the damage with property, or for harm caused to the health they pay wergeld in the amount established by custom. These cases are called angsyzdan, and the people regard them more indulgently than they do cases committed for revenge or for other aims.

672
685 The person under whose instigation and advice the theft was made, pays a fine, after which the thief returns the object stolen without a fine (Perovsk uyezd). According to bii Sultan, instigation and calumny is a sin which God never forgives (kudanyng kechpes gunasy). There are now many instigators (azgrushi) and tell-tales (suztasushi). The biis do not believe them. In confirming the proverb entered in Makovetskii: "He who ordered the beating is not punished, he who did the beating is punished" (ur degenge zor kel'mes, urganga zor keler) bii Sultan Kanaev says that the instigator escapes punishment because he will not acknowledge his instigation, and that even though the instigation can be proved, in general it is better to impose the punishment on the actual criminal. E. A. Aleksandrov also reports that the instigators and those assisting the crime are not recognized as guilty by custom.

Those who conceal crimes and transgressors, or objects obtained by crime are called to responsibility equally with the criminals themselves. The receivers of persons under suspicion are called to account like thieves. Unconscious concealment is not persecuted. Not giving up a thief, even though he be one's own son or father, is considered being his accomplice. The person who saw the crime but did not speak of it in the inquiry is also considered an accomplice (Perovsk uyezd). According to Kunakbai of the Auliye-Ata uyezd, the person who conceals property pays nothing, and if he was sentenced to pay an atton, for example, he can demand its return from the thieves. The person who conceals /146/ the thief himself does not pay. "A reprimand of him would be useless," added the bii.

Connivers and the other persons implicated are not subjected to any penalty, but they do not escape the inquiry and a reprimand (Perovsk uyezd). They are called kumekshi. The kumekshi is not a thief, but is not clean of thievery (kumekshi ury imes urydan kuru imes) as bii Sultan Kanaev expressed it.

673 The number of acts which are not considered reprehensible, or which are not prosecuted by customary law even though reprehensible, is considerable among the Kazakhs. (1)

1. In Makovetskii, Pt. I, p. 60 it says: The comparatively low level of culture of the Kazakhs not only explains their general view of criminal activity, but also their attitude to many acts which are prosecuted among civilized societies, and which are considered fully lawful among the Kazakhs.

Misdemeanors

	Opinions concerning punishments to be imposed for these acts			
	Sultan Daule: Bushaev, Petrovsk uyezd.	Bii Kunakbai, Auliye-Ata uyezd.	The Kirgiz bii Kurpetai Dauletkulov.	Bii Sazabai, Kurama uyezd.
Attempt to murder.	Three nines (tyuya-at-siir-bastagan toguz).	According to bii Sultan, "ayb for the knife", i. e., an attempt to murder (pshak ayby) costs 1-2 nines.		
/153/ Attempt at theft or brigandage.	Atton	In the opinion of Uymaut and others of the Chimkent uyezd, it is not punished. Sazabai agrees. According to Umurbek and others, there is pardon or a fine no greater than an atton.		
Fire resulting from carelessness.	Payment of damages.			Payment of damages (tuleuin beredi).
Setting a fire maliciously.	Payment of damages, with addition of fine or prison.			Payment of damages with fine of 50 rubles.

(Table continues).

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681 Reimbursement of damages is required for every kind of infliction of loss, damage to objects, etc., if it took place as a result of carelessness. For wounds and similar bodily injuries, the medical treatment and the support of the injured person is at the expense of the guilty person. If evil intent is observed in this, a fine is imposed to the value of the damages, in addition to the damages.

We append examples:

672 1) Clumsy medical treatment. A doctor (taub) who heals clumsily is suspected of evil intention, but he is not called to account. Only the expenses for the funeral (as su) of a patient who died can be referred to his account. He answers for it in the future life (akhiratda zamin).

2) Being bitten by vicious animals. If the owner of an animal did not know his qualities, he does not pay the expenses for the healing of the injured person, and for the damage suffered (bite, tisteb algan, dislocation, mirtildy, death), for "the animal does not know what he is doing." However the animal itself may be adjudged to the sufferer. But if the owner knew that his animal was dangerous to human beings, (adam khur) he should have either kept it tied up or slaughtered it, or sold it at a distant bazaar. For not having taken these precautionary measures, nor having kept an eye on the animal known to be vicious, he pays for the damage caused by it /15Y (Torgai and others), or a full wergeld to the report of Baymet Sagyndykov.

If a mounting camel or stallion bites or kills someone, the animal itself is given to the person who has suffered. Wergeld is not exacted.

If a camel walking about untethered bites someone, he is surrendered in place of wergeld. But if a person rides into a village on a camel and it bites someone, the rider pays a full wergeld. (1)

1. The owners are not held responsible if the animals bite each other. Only children arrange a fight between animals (talasteru) and they are not held responsible for damage (Perovsk uyezd).

685 3) Injury to strange animals, cutting out the tongue, disfiguring their appearance, is punishable by fine, and if the owner of the animal consents, by the buying of the animal from the owner for its original price. If the injury resulted in the death of the animal, its value is paid (Perovsk uyezd).

Animals are subjected to having their tails cut off for cropping grass from strange fields. But the owner of such an animal has the right to start a suit for disfigurement, in which case he himself pays for the damage from grazing (Kazalinsk uyezd).

There have been cases in which the owner of the animal with its tail cut off died a natural death during the period of time before the tail grew back. His heirs had the right to demand wergeld from the guilty person, as for murder. (Kazalinsk uyezd).

4) Arson. The person who sets the fire is sued for the total loss, for example, the value of the house or of the material and the wages of the workers, if he cannot clear himself with an oath. He is also required to pay a fine of one-tenth the value of the property. (2)

2. In the Chimkent uyezd the fine for setting a winter camp afire, for brigandage and for baranta is equal to wergeld for a man.

Suits concerning arson are investigated strictly (Katta suraydy) and are not settled without oaths, solely by testimony of witnesses. For unpremeditated arson a fine is not imposed, as is the case in all /158/ unpremeditated misdemeanors (yazym), which came, as they say, from God (kuday kykdyrgan).

Fires are permitted, to clear the steppe of the tough grass the previous year, which the livestock do not wish to eat, and also for the fertilization of the land to be ploughed. Such fires are forbidden in ploughed fields, hayfields and around buildings. In the Kurama uyezd, the testimony of four dependable persons is enough for conviction for intentional arson, requiring the payment for the damages and a fine equal to this (tengurtak). For example, for a loss of 400 rubles, the fine is also 400 rubles. Wergeld is paid for persons lost during the fire.

5) No punishment is given for deceit. The property taken by deceit is simply returned.

The following are examples:

a. A gift (syuyunchi) received for the report of false news is returned. They are scolded with the word muttakham (dishonorable), etc.

b. Money demanded in the form of an order by warrant, etc. is returned. Trust is forfeited.

c. There is no suit for denying one's own stamp /tamga/ (Abdrakhman).

d. For the affixing of a strange seal, and for every sort of fraud

695 payment of the losses can be required. The payment for a new receipt and for court costs can be required for assistance in changing a receipt, after which the debtor is freed from the obligations of the original receipt (the books of the biis in the Perovsk uyezd). The Kirgiz bii Daniyar finds that there is no suit for the making out of a false receipt and affixing a strange seal to it.

e. There is no fine for the substitution of something else for what was taken for safekeeping. However the biis hold to the proverb: Whoever behaves treacherously with objects given him for safekeeping will suffer punishment in the future (amanatka khyanat kylgan akhyret dzhaz tartady).

f. The sale of an object of lower quality as something of higher type constitutes deceit, and the bargain is broken off. /159/ g. If one and the same thing is sold to two different persons, it is adjudged to belong to the one who paid the money for it first and carried out the ritual of shaking hands, with the words: bereke tap ("to good fortune"). The money is returned to the other without a fine.

h. The middle man is not held responsible for arranging a sale of something he knows has been stolen, if he can produce the seller. But if he cannot find the seller he is held responsible before the person who suffered the loss, and pays a fine, for the middle man is considered a guarantor, kefil' (bii Abdrakhman, of the Auliye-Ata uyezd, and Torgai).

i. The conscious buyer of stolen goods must also present the seller, as was stated above.

E. A. Aleksandrov reports from the Kazalinsk uyezd that "a small deceit in trading is investigated. In case deceit is discovered, the dealer is obligated to return the payment received for the article. But if he does not desire to make the return voluntarily, and refuses to take the affair to court, the injured party has a right to take the payment by baranta. A complaint from the sufferer from baranta is not accepted or, when it is examined, it leads to the exaction of a fine from the person who caused the baranta. "

Bii Sultan Kanaev cannot remember from his practise any suits concerning acceptance of things for safekeeping. According to him, only losses due to deceit should be required to be paid.

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673 There are no special words among the Kazakhs to express the

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concepts of stealing and brigandage. Urlyk is stealing or brigandage; ury is thief, robber and criminal in general, urlamak is to steal, tartyb, almak is to take away, to ransack. Theft accompanied by violence is not judged more severly than simple theft.

Among the Kirgiz, there is more severe prosecution of the theft of a considerable number of objects, for clear robbery and for taking away by force (bii Daniyar).

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Robbery accompanied by violence occurs in the following forms among the Kazakhs:

1) The plundering of every kind of traveler, such as Sart merchants and travelers. It usually opens with /160/ a request for nasvay, tobacco, or with a double meaning, for that "which is in the belt."

2) Driving horses out of the herd at night.

3) The latest kind of robbery is asking for a ticket, the presentation of which is ignored, the declaration by the robber that he intends to rob, and frightening by various threats and charges, with the request to give this or that. The aim of these circumlocutions is to discover whether the traveler has any chances of defense or not. However, robbery by force is rarely accompanied by murder.

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According to the reports of the biis Sultan and Khalmakhammed, it is permissible to rob or to kidnap and not to return the objects gained in the cases below:

1) The father and grandfather can rob from a son and grandson as often as desired, and as much property as desired. It is even possible to sell everything a son has. It is permissible also to sell the son into bondage, i.e., to surrender him into service for a year, and to spend the money received (balanyng uzin kyzmetke satyb zhese kham khallal').

2) A son can rob from his grandfather and father up to three times. The fourth time a fine is imposed.

3) A kinsman can rob another kinsman to the third degree of kinship (first cousins).

4) The dzhien asks his uncles (older and younger brothers of his father) for a gift, and if he does not receive it, he can rob them up to three times. If he steals too much, they take away the superfluous part from him, leaving him 1 or 2 heads of livestock. If he steals a horse which is a racer (bayge at) the uncle can demand its return in exchange for something else. If he steals for the fourth time, they tell him: "You have forfeited the rights of a nephew" (dzhien dikten ketting).

602 The wife who leaves her husband in a disagreement should not
685 take anything with her. This would be robbery.

Robbery is permissible between relatives more distant than the third degree, with the obligation of return in so far as possible in the following cases: a) for the payment of kalym, because the increase of descendants is /161/ a laudable affair; b) for the payment of a debt; c) in time of famine; d) for a necessary trip and for the pursuit of thieves. (1)

[626] 1. Sometimes when something is missing in a village they put a bakan (pole to raise the changarak/the hoop in the center of the tent top/ when putting up the tent) up in the middle of the village and ask the thief to place the missing object under the bakan, threatening otherwise to invite the mullah in to discover him. The mullahs have various devices for discovering a thief. They bake a flat cake, blow on it (dem salady), and give everyone a piece, and when the thief swallows his piece, he will choke on it. They put a bladder (kuuk) in the hand of everyone, in turn, and in the thief's hand it swells (kebedi). They blow on a metal pitcher, calling the names of everyone in turn. When the name of the thief is called, the pitcher begins to turn around.

685 Furthermore these same biis permit taking away a horse from a known thief who is setting out to steal, if there is proof of this. They add however, that ayb is paid if the horse is taken away without proof, even though it be from a man banished from the community for stealing or one deprived of good name (muttakham). Taking away game caught by an eagle is not robbery but is taking the "chiralga" gift by force; therefore they require it to be returned without ayb. If the taking of the game were done secretly, then it would be stealing, and ayb would be paid. Finally, it is permissible to steal in return for stealing, i. e., baranta.

E. A. Aleksandrov reports from the words of the honorable Kazakhs, Umbet Galiev and Nurman Sarchinov, of the Kazalinsk uyezd, that stealing from the son and from the father is not permitted. In general such an act results in punishment for the younger persons, and ayb or shaming before the village for the older.

674 Horse stealing is more predominant than stealing of other livestock because horses are easier to arouse (chapchan). It takes

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place especially often in the border regions of uyezds, because the search for the animal and the bringing of a suit in a strange uyezd is accompanied by difficulties, and with the solidarity of the biis, volost officials, translators and other persons with their constituents, it often ends unsuccessfully. As a result, on the borders of the uyezds boys and girls stand watch (kuzetedi) over the livestock until dawn. Long spears (nayza) with standards are erected before the tents of rich men to frighten away thieves.

/162/ Professional thieves have accomplices in the neighboring uyezd for the sale and mutual exchange of stolen goods. They steal from their own volost and from a strange volost without discernment, blindly (kuzi sokur ksidey). But there is a proverb among the Kazakhs: "A thief is like a spoon, the people are like the sea. It is easier for the first to perish from stealing, than for the latter to perish from a thief" (uru kasyk ei tengiz, ol urluk kylyb uzi kuruydi onyng ushun ei kurumaydy).

Since a repetition of robbery is punished more severely by customary law, one who has fallen into stealing sometimes moves to another uyezd where he is not yet known, and in case of another conviction he is punished as though for a first case of stealing.

A thief is often registered in another volost, and in case of a complaint, the volost administrator refuses to find the stolen object on the basis that the thief is not subject to him. Meanwhile the administrator of the volost in which the thief is registered is unable to know anything because he is so far away.

The Tiuri of the Chimkent uyezd also command stealing. They [181] consider it shameful for themselves to engage in agriculture.

The tents of thieves stand alone, or in small groups of 3, 4, or 5 tents. In general the more people there are, the safer it is in the steppe.

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Stolen property when it is found is confiscated in favor of the owner, even though it may have already passed into strange hands by means of sale or as a gift. The person in whose possession it is found must produce the one from whom he received it, within a certain period of time. Sometimes the bii requires the person who has the stolen property to ride with the plaintiff to that locality where he hopes to find the seller of this property, and show him to the local authorities. If he finds the actual thief there, he demands from him a reimbursement of his losses. If the accused does not carry out the demand to go to the place where he says the thief is, and asserts that

685 he bought the stolen property from a person unknown to him, he himself is considered a thief.

/163/ If the accused cannot indicate the source of the stolen goods or gives confused testimony, he is considered the thief.

685 If the victim of the theft, without having tracks or a witness,
694 casts suspicion on someone, stating that the suspicious person was around the village where it was committed on the day of the theft, or else that he was near the stolen objects, then information must be obtained as to where the person under suspicion spent the night, with whom he had the evening meal and whom he met on the day of the theft. If the persons interrogated testify that the person under suspicion did indeed spend the night and sup with them and was nowhere else on that day, or that when they met him he was innocent of theft, then he is cleared of the accusation without an oath.

If the victim of the theft puts a purely verbal suspicion of the theft on someone, it must be learned by questioning outside people, whether the person under suspicion was at home on the day of the theft or in another village. If it is shown that he was at home on that day or in another village, then he is cleared of the false accusation made against him. But if he cannot prove this or is unable to find the people with whom he was staying or those whom he met, in that case he must be considered the thief and be obligated to pay for the stolen property.

If suspicion is strengthened by the vague and evasive answers of the suspect, then he must swear for the quantity of the stolen property.

If a theft is made from someone and he, without being able to find the stolen property anywhere, presents an accusation of a certain person, saying that a guest of the accused made the theft, in such a case it must be learned when the guest departed, who saw him on the road, and where he stopped. If the accused host can show three stop-overs of his guest, he is cleared of the accusation. If a person who met the guest, or if his hosts for the stop-overs testify that he /164/ was innocent of theft, then the guest as well as his host are cleared of the accusation without oath. But if the host is unable to give answers to all the questions noted above, and then, when obliged to find that guest within a certain period of time, is unable to do so, then he must answer for it himself.

If the master of the house says that a guest stayed with him and was fed by him, but who it was and where he went is unknown to his host, and that he does not know the direction in which the

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guest left in the morning, then the victim of the theft declares that he does not believe this, for the master of the house made the theft and sent the stolen goods away with the guest. If the master of the house then declares that he cannot find the guest, an oath is required from his side.

If during the investigations of the thief, evidences lead to a certain village or tent, their owners must show (izim shygaryb ber), on demand of the plaintiff, where these traces passed out of the village again. Otherwise the aksakals and the people are called as witnesses of the existence of fresh tracks which end in this village or tent, after which the relevant owners are held responsible before the court.

If someone suffers a theft and in following the tracks of the stolen property comes to a village, and the inhabitants declare that the theft was not committed by them and that they know nothing about the tracks, in case the tracks exist in the snow, an oath is required from the victim of the theft. But if there is no snow, the oath is required from the side of those who profess ignorance.

If the object in the suit was taken away not personally by the defendant but by a rider sent by him, and if the defendant disavows it, the rider is held responsible.

When a stolen head of livestock appears by itself accompanied by a loose animal, the decision is deferred, even for a year, to await information as to where the loose animal belongs. If this cannot be learned in the given length of time, then the person on whom suspicion fell earlier is held responsible. If he provides testimony about the stolen animal showing that it is homebred (koltuma), then his side is put to an oath before it is taken away from him. /Inserted page. Picture. Caption: Bii Mikebay of the Perovsk uyezd. Drawing by V. Olivetskii./ 1/2

/165/ When the stolen animal is confiscated, agreements are often made of the sort that the plaintiff pays half its value to the person from whom it is confiscated, with the understanding that when the thief is found he will pay each of them the value of the animal. 685

If several animals are lost and only one is found with the thief, it is concluded from this that he also stole the others, but a special oath is decreed for them.

When the stolen livestock is being returned, the rule is observed that the animal returned should be of the same quality, sex, age, and in general of the same value as that stolen, otherwise the

1/2 [Not reproduced -- A.]

685 thief should pay the owner the difference in money. In this last case, and also when all the stolen livestock is paid for in money, care is taken that the animal should not be underevaluated, for otherwise the owner demands the exaction of an additional payment (tolyktyk) from the bii.

685 694 An animal recognized at the bazaar is not confiscated. The person who has brought it there must present the man from whom he received it; otherwise, if he declares it to be his own property, they go to the bii (Abdrakhman, Auliye-Ata uyezd).

An animal which is recognized in the possession of an outside person, who did not steal it himself but bought it at the bazaar, is confiscated only if the person recognizing it proves by his personal oath, and the testimony of five (1) witnesses, and the oath of one

1. According to other information, seven witnesses.

witness that the recognized animal or other property actually belongs to him. The animal is not confiscated until the decision on the case. If a sheep is recognized in the possession of a man who bought it at a bazaar, neither testimony from witnesses nor a personal oath gives the owner the right to take it away, since the sale of sheep at a bazaar takes place without guarantors and there is no sidzhil' (2)

[695] 2. A copy of a decision of judges, kazis and other officials is called sidzhil'. According to this copy, a thing which is recognized by an outsider, who proves by the testimony of witnesses his right to it, is confiscated. A copy of such a judgment is given to the defendant, /166/ so that he can sue the person from whom he bought it for his losses. There is also a sidzhil' in civil suits for money. If an animal is confiscated by sidzhil' a karkara destroys the force of the sidzhil'.

The testimony of several persons, with their signature and seal, with the countersign of official persons is called a karkara. In this testimony it is explained that such and such an animal, with an exact description of it appended, constitutes the homebred property of such and such a person.

for them ordinarily. (Communicated by Yunusov).

685 /166/ Placing one's brand on a strange animal is considered to be stealing. According to Abdrakhman, this happens rarely. For

placing a brand on a loose animal a fine can be imposed of half the value of the animal. Placing one's brand on an animal with one for safe-keeping, is not considered reprehensible if such a one is returned on the first demand. According to Kyulbaev (of the Kurama uyezd), putting one's brand on a strange animal unnecessarily (bikerge), whether it is a loose animal or one received for safe-keeping, is punishable by a fine of 20 rubles. According to the Kirgiz Daniyar, placing one's brand on a strange animal is considered as clear (zakhir) stealing, and is punished in proportion to the penalties of the assemblies (siez kesimi menen) i. e., for one sheep 4 sheep must be paid and 4 rubles in addition. 685

The owner of the lost object usually appears before the person suspected of the theft accompanied by two or more outside impartial persons (khalis ksi), exceptionally, only one, and searches (tentedi) him. The outsiders serve as witnesses. If the suspect does not permit himself to be searched (tentkizbese), he is considered to be guilty. 685 627

When a thief is caught by the owner of the stolen livestock, he usually gives up or promises to give up everything which was stolen by a certain period of time, often according to a voucher, asking only that no suit be charged for the exaction of the usual fine. The owner may be satisfied by the return of his property and by taking away a horse or a coat, i. e., atton (1) from the thief, as a reward

1. Sometimes a horse and gun or some other object is taken under this name.

to the captor.

When there are several thieves, the one who is at hand is held responsible. When only the father of the thief is at hand, a suit directed against him is accepted by the biis for trial, on the basis of responsibility by reason of kinship. 685 672

/167/ If a thief rode a strange horse when committing the crime, the owner of the horse is a participant in the theft.

If the plaintiff confirms the fact that when the defendant was caught the latter gave him money in order to end the affair, and if later the accused clears himself by an oath, the money in question is ruled to the defendant. 685

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According to the communication of Sultan Daulet Bushaev, a thief from a distant place, whom it would be difficult to find again, 697

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his relatives appear and say to the volost official: "Give up this thief to us. We will interrogate him well. If he is guilty of something we will make him pay for it. If he is innocent we will present you with proof" (bul uyyny bzning kolymyzga ber, muny abdan khub suralyk; algan bulsa, maldy alyb berelik, almagan bulsa, almagan iken dib sizdi isenterelik). In agreeing to give up the prisoner, the volost official takes a receipt (tilinen khat) for the fulfillment of the promises mentioned above.

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The owner who has already received his property can receive a supplementary atton from the thief. Sometimes the biis and aksakals among the relatives of the thief say: "He is innocent of other thefts (uzge maldan); take atton from him and give him a voucher for the fact that you will not open suit against him for anything lost" (falan vakytda dzhogalgan degen maldy suramaska), or else: "But if you are thinking of opening a suit, give us back the atton you took from us." They never take the atton anymore, however. This custom existed under the Kokandians and khans. In this way, as was explained above, the thief was often released without bringing him to a court examination (Torgai).

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/169/ A candid confession does not lighten the punishment. On the contrary, when the bii sees the offender acknowledging the fact of his commission of the crime without shame, he may considere him a hardened ruffian or a professional thief and impose a higher fine because of this, or punishment by whipping. (Mikebai, Perovsk uyezd).

The plaintiff for his part, seeing that the defendant confesses from honesty and straightforwardness (er iken, muynyna, alyb otur, chinin aytty) can resign from the whole suit or part of it (Perovsk uyezd).

When there is a voluntary confession (azamat iken, uzi kelib aytty), with or without a court summons, the punishment can be reduced, and in view of repentence, completely forgiven, but only with the consent of the plaintiff (Auliye-Ata uyezd).

If a defendant denies the fact of his confession at a previous interrogation by a village elder, confirmed by a written act, the biis consider it possible to require a purificatory oath, as with a simple disavowal.

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Stealing with house-breaking or without house-breaking, from a trunk and from an open place are punished alike (Torgai). (1) There

1. According to Makovetskii, Pt. I, p. 81, the easier a theft is, the more shameful it is considered. On this basis

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the stealing of sheep is more severely prosecuted (sheep are watched less carefully than other livestock), namely, a fine of one toguz is imposed for the theft of one or several sheep, in addition to the return of the stolen animals. It was stated in the Geographic Society's outline for the collection of folk juridical customs (p. 31) that a larger reimbursement was demanded among the Kazakhs for the theft of sheep because a high value was placed on them for their numerous offspring. It will be seen below in the chapter on punishments that this custom does not exist in the Turkestan region.

is no special punishment for damage to a wall, a lock, etc., in the process of stealing. Reimbursement for such damage is included in the fine imposed.

The theft of a fettered animal is punished in the same way as the theft of livestock grazing freely.

681 There is no special exaction for the hiding of traces of a crime. An exception to this is hiding the body in a murder (cf. wergeld).

[682] In Makovetskii's book, Pt. I, p. 79, it is said: "Violence during /170/ theft of property, for example, the infliction of wounds, is regarded as a separate crime and there is special punishment for the theft of the goods and the infliction of wounds." The biis Sultan Kanaev and Khalmahammed find that violence and theft are judged without division. A fine is exacted as for an ordinary theft, and only expenses for the healing of the wounds are added. If there were blows without wounds, then nothing is added to the fine for the theft. The proverb: "You cannot skin two hides from one sheep" (bir koydan eki teri soymaydy) is relevant here, i.e., two punishments are not imposed on one criminal. Only an inexperienced bii can impose two fines (bil'mes bii klady eki ayb).

681 683 A criminal who has already been convicted for one and the same crime is punished more strictly. (1) For the second theft they

1. This is the opinion of many, including the Kirgiz Daniyar, and agrees with Zagriazhskii and Samokvasov, but conflicts with the opinion of the Makovetskii collection, Pt. I, p. 65.

require the confiscation of all the property of the thief, with his release on guarantee, or depriving him of liberty. For a third theft he is banished, with the declaration that they refuse to pay and receive wergeld and other exactions for a thief

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In the Chimkent uyezd, according to Absalyamov, all the property (dzhasau) and money in litigations are translated into livestock (malga chaglab).

This opinion contradicts the following indications of biis from the same uyezd:

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For theft it is customary to pay, including the value of the stolen article, a fine and all the expenses:

Theft	According to bii Sultan Kanaev	According to bii Kucherbai	
		Formerly asked	Now accepted
1 camel	40 tillias	Value of camel -10 tillias	20 tillias
		Muynyna kosak 10 tillias	
		Kutine terkeu 10 tillias	
		Pay of rider 1 tillia	
		Biilyk 4 tillias	
		Syuyunchi 4 tillias	
		To scribe (mirzakhaky) 1/2 tillia	
		Traveling expenses, food etc. 1/2 tillia	
		40 tillias	
/232/ 1 horse	20 tillias	20 tillias	10 tillias
1 cow	15 tillias	20 tillias	10 tillias
1 sheep, 3 years old	5 tillias	5 tillias	5 tillias
1 donkey	9 tillias (the bii himself had occasion to impose this fine for a donkey.		5 rubles
1 ruble	10 rubles. (This was aimed at stopping robbery. However he could not remember a case of theft of money).		

681 Bii Sultan Kanaev explains the lowering of the fines in the
685 second column of the information from Kucherbai as follows: This happens only when the biis ask the plaintiff to forgive part of the suit because of poverty. They say "Where can a thief get such a sum? Would he have stolen if he had had means?". Bii Khalmakammed added that biis have recourse to this device who receive something from the thief.

It is not obligatory to impose a fine in money in the amount of muynyna kosak kutine terkeu for the theft of money (Perovsk uyezd).

According to Torgai, one view has it that for a theft of money a fine is imposed in the amount of muynyna kosak kutine terkeu. Another opinion is that a smaller fine is determined, namely: 1) if the stolen money is all found (tugul tabylsa), then in justice (insaf kylsa) there is no other fine beyond the biilyk and syuyunchi; 2) if the money is not all found and the defendant wants to give it all but cannot immediately, /233/ then the fine, syuyunchi and all the expenses are added together into one sum, equal to half of the money which was not found. For example, if of 20 tillias, 10 tillias are given up at once and 10 tillias remain, there is a sentence to pay these 10 tillias plus 5 tillias, totalling 15 tillias.

According to Kyul'baev, for the theft of 50 tillias, if the defendant does not deny it, they ask a fine of 50 tillias plus 10 tillias (under the name of sandyk khakysy, "for the coffer", i. e., for the plaintiff), plus 5 tillias (to the bii).

In the Auliye-Ata uyezd, for the stealing of things but not live-stock a monetary fine is imposed which is much less than the amount of muynyna kosak kutine terkeu.

According to Torgai, for the theft of a long coat and other things to the sum of 10 tengas /silver coin/, the fine is established at 15 tengas if the total stolen amounts to 15 tengas, the fine is 20; if the total stolen amounts to 100 tengas the fine is 120 tengas, etc. The larger the amount of the suit, the smaller the percent added to the fine.

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681 For murder, a redemption of "khun" /wergeld/ is
682 customary, and in case it is not paid, the death of the murderer himself is asked, or that of another man from his clan. (1)

1. An interesting ritual of symbolic execution of a ram at the time the wergeld is received can be found

Among the Kirgiz, the defendant in such cases justifies himself with the words: "But did I pull the baby out of you?" However he pays for the miscarriage: 30-40 rubles for a fetus of 2 months, 40 rubles if it is 3-4 months old, 40-50 rubles if it is 5-6 months, 100 rubles if it is 7-8 or 9 months old. 681 682

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It is necessary to distinguish the corporal punishments administered by the elders in the village in private fashion, from the official ones, decreed by the biis, which are an innovation which has arisen to a slight degree in the steppe from the Kokand fortresses. Official corporal punishments are not practised now. In the Auliye-Ata uyezd the present biis do not remember an example, and only two instances can be found of it in the bii's books of the Perovsk uyezd. In one, there is a threat that in case the stealing is repeated it will be punished by the whip (durra). In the other, a fine is imposed on an inveterate thief, and in case he is insolvent - 25 strokes of the whip. In the opinion of Mikebai, this last judgment comprises an error: one of these punishments should have been determined categorically: either a fine, or blows with the whip. 681 627

Private corporal punishment does not excuse the culprit from paying a fine, but the official one does. According to Aleksandrov, /245/ a fine is substituted for corporal punishments only when the plaintiff expresses his consent.

In private corporal punishment, the number of blows of the whip (kamshi) or the stick (chibyk) are never counted, and the guilty person is beaten until he repents. But if he dies from the blows, wergeld is required for him. The biis do not accept complaints for private punishment for wrongs, for example, for adultery.

No one is exempt from corporal punishment if he is caught stealing, by position or by origin (white bone, elders, small children). They usually sympathize with the old persons and small children and spare them, but if they are bound up and beaten, they cannot complain to the bii because of blows which led to illnesse Women who are caught stealing are not bound or beaten. [685]

What we have called private corporal punishment can be called taking the law into one's own hands, when it is particularly cruel. This last concept does not exist among the Kazakhs or the Kirgiz. There are cases in which they cut off the nose or kill a person caught in adultery. (1) It is said that at one time, the murderer of the adulterer 681 627 684

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3. According to an eye-witness, the Kazakh Babaev, in the Kokand dominion, in Yany-Kurgan, the border point between Russia and the Kokand khanate, two Russian Kazakhs were impaled on a stake for some fault, in the following manner: they threw the criminal on the ground on his back. Then several men held him by the legs, while two thrust the sharpened end of a stake into him, 14 to 21 feet long and as thick as a man's arm. Then they lifted him into the air and fixed the stake in the ground. Some time later a Sart rode up and hit the two condemned men on the head with his Circassian saber. Both died during the night.

Among others, the following punishments existed earlier, according to the report of E. A. Aleksandrov: a) the guilty person was laid on the ground in the middle of the village with arms outstretched and face up, and his arms and legs were tied to stakes driven into the ground for that purpose, after which a herd of sheep was driven over him. The size of the herd depended on the degree of his fault. If the person subjected to such a punishment was crushed to death, his kinsmen received no wergeld. (4) b) Execution by cutting

4. According to the report of bii Sultan Kanaev, the driving of sheep over a criminal (ustinen koy aydaydy) happens only for theft from close relatives or adultery with close relatives, for example, persons of the same village. [685] [684]

off the head with a Circassian saber. Such a punishment took place with the consent of the sultan, and after the judgment of the offense by elders at a general council "maslyagat" (abbreviated: mastat).

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He who is guilty of lack of respect for the fundamentals of the structure of the life, the clan, the family, etc., is subjected to the punishment of shaming, /247/ called "visiting of the people" (el aylantyrmak). They tie the guilty person's hands behind his back, smear his face with soot, put a cord around his neck or a piece of old felt (kurum) and lead him on foot around the village. One man drags him from in front, and from behind a rider drives him and beats him (Perovsk, Kazalinsk and Auliye-Ata uyezds and among the Kirgiz).

681 In the Kazalinsk uyezd, the shaming in addition to this consists of the person who has suffered telling publicly of the crime of the guilty party.

Among the Kirgiz, the guilty person is led three times around the village, with an old felt on his neck, and he is beaten and forced to say: "I committed such and such an act (men falan ish kyldym), and this is the punishment for it (dzhazal)". After this they place him in a pit to rot (churib ulib kitedi). This punishment was practised under the Kokand serkers for: 1) robbery, discovered at the moment of commission, even though done for the first time; 2) adultery with another man's wife, under the same circumstances; 3) lack of decorum before superiors. For incest it was customary to stone people (tashbaran).

681 The punishment for an unrestrained passion for stealing was formerly to confiscate all the property (kanau, uruganau). The house of such a thief (in the Auliye-Ata uyezd) was subjected to attack and looting (uyin chaub alyb malyn aldy), or he was given up to the Kokandians, who hung him. Now under such circumstances they establish a sentence to exile him in Siberia or to banish him (1) from

1. The ousted person, excluded from his family and clan and therefore deprived of the support and defense of his clan, is called abrek among the Cherkes. A murderer, for whom his clan did not pay the "blood price" was made abrek primarily. Among the Mongols, exiles who departed from their kinsmen's clan and confederation were called ölöt or sabsars (Adaty Kavkazskikh Gortsev, pp. 359-61).

his milieu, saying: "We have banished him from our midst, we will be ruined because of his stealing. Let no one defend him in court (ichimizden chykarduk, kyuymeymiz urlygina, dauyn ich kim sura-masun). After this the thief becomes homeless, and is not reckoned in any volost. (2).

2. Two decrees of banishment from the community are given in Supplement No. 7. 1/A

681 /248/ The withdrawal of the parental blessing from children exists. This takes place in this manner: The palms of the hands are pressed together and then pulled apart from each other three times. 1/A [Not translated -- A]

[220 cont.]
open disobedience. Nurali's declarations and his oft repeated requests to use reprisals on the borders by seizing bandits or their kinsmen were more sincere than was believed at the beginning, and later they were taken into consideration. They were also confirmed by the opinion of Tevkelev, who had had experience in relations with the Asiatics, as well as the replies of several sultans who had been requested, like the Khan, with no success over [221] several years, to give up their Russian prisoners. There were also the examples of Khiva, the land of Bukhara, and other powerful states who regarded reprisals (baranta) as indispensable in order to restrain a nomadic people.

Convinced by its experience and seeing that indulgent patience was far from lessening the temerity of the Kazaks, but indeed increased it, the Russian government finally decided to behave toward this people in the same manner as did all their other neighbors. Thus the border authorities were given orders (1)

1. Ukase of the Ministry of Foreign Affairs of November 27, 1749.

that in case of theft or the carrying off of persons they should require the Khan to release at once what was missing, and if he refused satisfaction or advised that reprisals be taken, they should take advantage of the first favorable opportunity to seize one of the kinsmen of the guilty person, or even any individual of his tribe (assuming that the guilty person himself did not show himself to the Russians again), and to hold this person under careful guard until the prisoner or the stolen objects should be returned.

This measure was not in harmony with the principles of equity customary among civilized peoples, but it was indispensable with the nomad brigands.

During this same period, in order to oblige Nurali to carry out the requests of the Russian government and to furnish him means of paying for the services his subjects rendered to Russia without injury to himself, he was assigned an annual stipend. At the same time a rule was set to send various gifts of fixed amounts in the name of the border government. But it was

[242 cont.]

×648 These moods were constantly increasing the audacity of the Little Horde, and the Khan pleaded as an answer the weakness [579 685] of his power. In this situation an order was sent from St. Petersburg (1) to require the Kalmuks to return the horses they had stolen

1. Ukase of the Ministry of Foreign Affairs of July 18, 1760.

and to punish the raids of the Kazaks by sending troops into their lands to find the offenders and to seize their possessions, or at least to arrest their kinsmen. But this was to be done without touching, under any circumstances, those who were strangers to them.

[721] In 1761 part of the Little Horde attacked the Russian borders again and was again punished by force of arms. The reason for its attacks was the same as that for the year before. The Kalmuks had not returned the stolen horses, and the courtesies which were owed them had not been shown to the Khan and his brothers in Orenburg, although at the beginning of the year they had not taken part in the raids. In the autumn the Sultans Erali and Aichuvak were [579] in such a state of outrage at the behavior toward them [243] that they began to halt the caravans which were returning to Orenburg. Aichuvak even had the intention of withdrawing with the [167] Semirod descent line toward the Chinese border into the lands which had belonged to the Dzungars. In order to keep these two [661] sultans as well disposed toward Russia as they had been earlier, the higher authorities granted annual stipends to each of them in spite of the conduct of the local authorities in Orenburg.

×648 Because of this state of affairs in the Little Horde and the ambiguous position held by Sultan Ablai, which nevertheless was not harmful to Russia, when Emperor Peter III was elevated to the throne; the Khan and the principal Kazak sultans were sent [662] letters with this information without demanding a new oath from them. It was believed that they would have refused, and it was decided not to carry out this formality until they should be in Orenburg themselves. In order to keep them in a state of

/The Kazakhs/

S 563 K 685 One custom peculiar to the Kazakhs involves stealing. The Kazakh will steal only from someone who has been unfriendly toward him, and generally he will steal only animals, which cannot be well hidden. The idea behind the act is to show courage, and if the theft goes unnoticed, the thief feels proud of his cleverness. Once the theft is discovered, however, the thief willingly admits he has been outwitted, and submits to punishment. It is customary for the apprehended thief to repay nine times the property stolen; that is, if he has stolen one sheep, he must give its owner nine sheep.

S 563 K 574 The Kazakhs are noted for their hospitality. In theory, they must keep what amounts to open house for travelers, including enemies and strangers, and a guest may stay indefinitely without paying for food or lodging. It would be very bad form for a host to ask a guest to leave. Furthermore, the welfare of the guest is the responsibility of the tent owner. A traveler may claim damages if he has suffered from hunger or exhaustion in the vicinity of any camp ground.

Obviously such laws of hospitality impose a heavy burden upon the host, and for that reason the Kazakhs try to avoid camping near routes of travel. Some even conceal their tents behind the hills. In practice, the traditional hospitality is kept K [556] only by the wealthy, and then, "A visitor is treated well or ill [554] according to the importance of his 'tribe' and the number of his ancestors." (Hudson 1938: 73.) That is, for a guest of importance the host would kill a sheep, whereas a poor visitor would be served only tea or milk.

S 563 K 608 Sworn brotherhood is a practice prevalent among the Kazakhs, a relationship which may be formed between two persons of different blood groups. A very solemn ceremony takes place when two persons take the oath of brotherhood. They may swear on the Koran, or "embrace one another over the blade of a sword or with a dagger at the throat of each other, taking oath that they would be friends to one another for a specific time or for life." (ibid.) Such brothers share each other's happiness or sorrow, and personal and family property. The offspring of the sworn brothers may continue this relationship. Women, too, may fraternize in this way, and it is said that the relationship may even be formed between two persons of the opposite sex.

S 563 K 576 264 574 [171] The Kazakhs practice the same etiquette as the New Uighurs, with a few noteworthy variations. At feasts, the animals to be eaten are always killed in the presence of the guests, to honor the guests and indicate that they are being offered the best. Another strict custom, observed by both men and women, is to wear a hat or cap at meals. If a guest has forgotten his hat, he is given a stick of straw to adorn his head. To eat bareheaded is an insult to the others present.

[Great Horde]

596 could make no such allotment; the herd belonging to such a family was too small to allow for such a division.[98] Therefore it was held in common supporting those whom it could support, while those who were in excess might go off to join the family of a kinsman. The practices governing inheritance will be taken up below; here only certain aspects of family property can be treated. The son to whom allotment during the lifetime of the father was made on the occasion of the marriage of the son, lived and herded in common with his father.[99] Rights in the family property continued to be recognized even after brothers had separated, for example, if one brother died without male heirs, the family property passed to surviving brothers even if they did not live communally.[100]

593 671 602 685 The general position of the family in the social structure of the Great Horde may be drawn from its situation before the law. The criminal law of the Great Horde, as codified by Grodekov, had a number of references to the manner whereby theft within the family was handled. The Kazakh law in the matter of felony corresponded to what Durkheim has called restitutive law, rather than to his category of repressive law; and to the private delict in the somewhat more cumbersome terminology

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[98] Ibid., 2; Radloff, op. cit., I, 513.

[99] Izraztsov, 3.

[100] Ibid., 70.

[Great Horde]

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of Radcliffe-Brown.[101] The rustling of cattle (baranta/barymta) was permitted in the following circumstances, according to information received by Grodekov from the biis of the Great Horde:

1. By the son from the father, or the son's son from the grandfather, regardless of how many times or how much property was involved. On the other hand, the father had the right of seizure of the entire property of the son; the father had the right to indenture his son for annual terms, and the money thus earned was applied to the father's estate, i.e., the family property.

2. Stealing between sons of brothers could not be punished.

3. The sister's son might request aid from the uncles (mother's brothers). If this aid was not forthcoming, the sister's son (dŭien) might make up to three seizures on the property of the mother's brothers. If he made seizure beyond that number of times, the difference was taken away from him. If he should steal a courser, the maternal uncle might require a return of like value. If the sister's son stole a fourth time, the maternal uncle might tell him: "Thou losest the rights of a nephew."

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4. Among kin related beyond the third degree (those with a common father's father), seizure was permitted, with the obligation to repay, however, as soon and as

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[101] Durkheim, Division of Labor, 112 ff; Radcliffe-Brown, Primitive Law.

602 685 much as possible, in the following circumstances: (a) for payment of bridewealth (kalym), since the increase of descendants and the need to marry was a desirable thing; (b) for the payment of a debt (to a stranger); (c) in time of famine; (d) for a necessary journey, or in pursuit of bandits, rustlers, etc.[102]

602 593 The degree of mutual support and dependence may be directly inferred from these sections of the criminal code: the father, the father's brothers and the father's father were effectively regarded as one social unit, from the viewpoint of the son. Property rights were in common, at least before the law. Relations between sons of brothers were only slightly more distant as measured by these practices of restitution and the recognition of felony. Mother's brothers and sister's sons were about in the same category as father's brother's sons; seizure beyond these degrees of kinship was reckoned as theft except under specified circumstances.

604 601 Important to note, although its fuller implications must be left for later discussion, is the significance of the avunculate: the mother's brother was under strong obligations to the sister's son, his džien.[1] An identical practice is found among the Kalmuks, and even the two terms (Kalmuk sē/dzē) are cognate terms. There is a clear and demonstrable correlation between the termi-

[102] Grodekov, 160-162; cf. Pingelstedt, 148.

[1] [Cf. cat. 602, pp. 421-422 -- Ann/yst]

674 Stealing among the Kazakhs is a rather
685 widespread crime. They steal horses, primarily.
• If the thief is caught there is the custom of taking the stolen animal away from him and adding to this a fine of twice its value. As the Kazakhs say - in such cases it is almost always a question of horses - ' on the neck an addition, to the tail a support ' (in Kazakh: muinena kosɜau, kutenia-terkiau). This punishment is
695 called 'aip' or 'aibana'. In case there are no witnesses, the oath of some outside person is needed /346/ who is known for his honesty and who knows the accused. If such a person is found and wishes to give his oath on the innocence of the accused, then the latter is definitely released from the charge. It must be said that this is a very reliable way in
[577] general of learning the truth. It costs the Kazakh nothing to lie himself, but for some reason he will not consent to take someone else's lie upon himself.

In general, the oath, as soon as it happer between Kazakhs and not to aid an infidel, that is, a Russian, has a very serious significance and is considered sacred. At the present time it is usually given with the kissing of the Koran in the presence of an honored person or mullah, but earlier, various rites were observed. For example, it was necessary to lick the fingernail, looking at the sun, or to say the oath with the muzzle of a loaded gun in the mouth. This has already gone out of use
[778] today. In important cases, however, even now, those who are to swear are invited to some holy sepulchre and it is suggested that as they say the oath they cut off the branch of a holy tree there. It is a rare Kazakh who will consent to this sacrilege if it is a false oath.